

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DIONNE CHARLES and McKENNIE CHARLES,

Plaintiffs,

-against-

Civil Action No.:

NOTICE OF REMOVAL

COSTCO WHOLESALE CORPORATION

Defendant.

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COUNSELORS:

PLEASE TAKE NOTICE that defendant COSTCO WHOLESALE CORPORATION, by its attorneys WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP, pursuant to 28 U.S.C. §1441 and based upon this Court's diversity jurisdiction under 28 U.S.C. §1332, removes this action from the Supreme Court of the State of New York, County of Kings, to the United States District Court for the Eastern District of New York. The grounds for such removal are as follows:

1. Plaintiffs Dionne Charles and McKennie Charles commenced an action by filing of a Summons and Verified Complaint in the Supreme Court of the State of New York, County of Kings on or about February 7, 2017. No request for a specific monetary damages amount was particularized in the complaint. The action bears the Index Number 502518/2017 and is a civil action seeking damages for personal injuries arising out of an incident allegedly caused by Costco's negligence. The plaintiffs also seek punitive damages. A copy of the Summons and Verified Complaint for that action is attached hereto as Exhibit "A". On March 30, 2017, defendant Costco served its Verified Answer to the Verified Complaint. A true and accurate copy is attached hereto as Exhibit "B".

2. Upon information and belief, Exhibits “A” and “B” are the only pleadings in the action filed in the New York Supreme Court of Kings County.

3. Plaintiff is a citizen and resident of the State of New York and resides in the County of Kings, at 239 9th Street, Brooklyn, New York 11215. See Exhibit “A”.

4. Defendant Costco is a foreign corporation organized and existing under the laws of the State of Washington and has its principal place of business in Issaquah, Washington.

5. On March 30, 2017, the undersigned firm received a written correspondence from plaintiff’s counsel wherein he granted consent to remove this case to federal court given, implicitly communicating a damages value of greater than \$75,000. A copy of this correspondence is attached hereto as Exhibit “C”.

6. This removal is timely pursuant to 28 U.S.C. § 1446 as it is being made within thirty (30) days of the receipt by the defendant of “a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable,” and less than one year after the commencement of the action. See 28 U.S.C. § 1446(b)(3); 28 U.S.C. § 1446(c)(1); *Moltner v. Starbucks Coffee Co.*, 624 F.3d 34 (2d.Cir 2010) (holding that the removal clock did not begin to run until defendant received the first paper from which it could ascertain that the case was removable—specifically, plaintiff’s letter stating that she sought damages “not to exceed \$3 million,” and not from the date the complaint was served).

7. Jurisdiction exists in this Court by reason of diversity of citizenship, 28 U.S.C. § 1332, as there exists complete diversity between the parties and the amount in controversy exceeds \$75,000.

Dated: New York, New York
April 25, 2017

Respectfully submitted,

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER

/s/ Rachel A. Rubin

Rachel A. Rubin, Esq.
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